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1949.

File No. O. Def. of India/49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Defence of India Act

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C O N T E N T S.

Legal Department File No. O. Def. ~~In~~ of I/49

Sr. No.	R.I. /O.No.	Subject	Pages.
1	338 11-1-49	Def. of India Rules -- Rule 81(2)-- Increase in rent.	1
2	1281 3-2-49	Whether on derequisition the owners are entitled to have their requisitioned buildings restored to the original conditions.	3-5 (3-4 not typed)
3	2816 11-3-49	Def. of India Act--Sec. 19- Whether under the above sec. Arbitrator can be appointed to determine appointed to determine the compensation in respect of requisitioned premises.	7-9 (7-8 not typed)
	1662 11-2-49	Oil-seeds (forward contracts Prohibition) Order, 1943 -- Whether the prosecutions for breach of oilseeds order may be withdrawn in view of the ~~xxxxxx~~ judgment of the Addl. Judge, Ah'bad in Cr. Appeal No. 159/48 which was a test case.	11-16 (11-12 not typed)
5	6877 22-6-49	Def. of India Rules --- Rule 75A Whether the amount incurred for renovating the electrical installation should be paid by Govt.	17-19 (17-18 not typed)
6	7241 30-6-49	Def. of India Rules -- Rule 75(1)-- Fixation of compensation for requisitioned premises.	21-23 (21-22 not typed)
7	10811 27-9-49	Def. of India Act, 1939 -- Sec. 19-- Fixation of compensation payable to Landlord after derequisitioned.	25-27 (25-26 not typed)
8	11420 13-10-49	Def. of India Act 1939-- Sec. 19 Arbitration in respect of certain property at Ah'bad.	29-33 (29-32 not typed)
9	12924 15-11-49	Def. of India Act, 1939-- Sec.19(1)(b) Appointment of Arbitrator to fix the amount of compensation payable in respect of requisitioned premises.	35-37 (35 not typed)

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Office of the R.L.A.

Increase in rent. Defence of India Rules.--- Rules 81(2)

R.L.A.'s opinion Nos. 9684 dated 3-10-1947 and 3184 dated 2-4-1948

The fixation of rent by an order under rule 81(2) of the Defence of India Rules being in the interest of the general public it would be a breach of public policy and an encouragement to the commission of the offence if the principle that "everyone has a right to waive and agree to waive the advantage of a law or rule" were applied in the present case. Consequently it would not be proper for Government to allow an increase of rent in excess of what is provided in clauses (1) and (2) of the District Magistrate's order at p. 21 ante.

Sd/- P.M.L.
10-1
Remembrancer of Legal Affairs.

U.R. to E. & I.D., No. 338, dated the 11th January 1949.

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On derequisition on the 31st August 1946 the owners were entitled to have their requisitioned buildings restored to the condition in which they were at the time of requisition. This means that the liability which Government Shares with the Municipality under the requisitioning orders would be limited to the damage done to the requisitioned buildings up to the date of requisition, i.e., the 31st August 1946, and not to the damage done subsequently. The owners can, therefore, claim the costs required on the 31st August 1946 to restore the building to their original condition

Sd/- P.M.Lad

o.c. 2/2/

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* H.D. File No. 317-III(a)
" 816-III(B)
Br.

* U.R. to H.D. (Poll) No . 1281.dated the 3rd February 1949

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In view of the decision of the Jt. Civil Judge (Senior Division), Poona, in C.S. No. 617, of 1947, the flats in question will have to be treated as requisitioned and a reference should be made to the Arbitrator under S 19 of the Defence of India Act, for determining the compensation in respect of the entire building.

Sd/- P.M.Lad

O.C. 11/3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 2816, dated the 11th March, 1949.

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Memo of Instructions.

Under Rule 119 of Decence of India Rules, it is incumbent on the authority promulgating the order to prescribe the mode of publicity. The Oilisseed(Forward Contracts Prohibition) Order, 1943 was issued by the Department of Commerce, Central Government on 29-5-1943 and as at that time the practice of making a reference to Rule 119 in the preamble of the order was not followed, it would be difficult to prove even if the original file of the Department of Commerce is called for, that the Joint Secretary who promulgated the order also at the same time prescribed the mode of publicity vis. publication only in the Gazette, The order was republished in the Bombay Government Gazette- Extraordinary- Part IV-C dated 2.6.43 and the District Magistrate, Ahmedabad says that only a summary of the order was published in Gujrat Smachar. Presumably the order was also published in the Times of India which has a wide circulation in Ahmedabad, Besides it appears that a press note bringing the provisions of the order to the notice of the public was issued on 14-8-45 and though the papers do not disclose the names of the newspapers in which it was published, a reference to the Director of Publicity would elucidate matters and it might be possible to prove that wide publicity was given.

*Slip D.

*Slip A.

In criminal appeal No 159 of 1948 The Addtional Sessions Judge acquitted the Accused on the ground that the Oilseeds (Forward Contracts Prohibition) Order, 1943 was not properly published as required by Rule 119. In his judgment he has observed as follows:-

"It is not laid down in Rule 119 that defective publication invalidates a conviction but since there would otherwise no point at all in including Rule 119 in the Rules one must presume that that was the intention of the Central Government."

This observation does not appear to be correct. Sub Rule.

P.T.O.

(1B) of Rule 119 of the D of I Rules reads as follows:-

"(1B) If in the course of any judicial proceedings, a question arises whether a person was duly informed of an order made in pursuance of those Rules, compliance with sub-rule (1) or in a case to which sub-rule (1A) applies the contification of the order, shall be conclusive proof that he was so informed; but a failure to comply with sub-rule (1):-

(i) shall not preclude proof by other means that he was so informed; and

(ii) shall not affect the validity of the order."

It is therefore clear that failure to comply with sub-rule. (1) of Rule 119 does not affect the validity of the order. Sub-rule (1B) was added to Rule 119 on 21-7-1945 and though the oilseeds (Forward Contracts Prohibition) Order, 1943 was issued before 21-7-1945, the sub-rule being procedural would apply to judicial proceedings continued or instituted after that sub-rule came into force. It appears that no evidence was laid in that case to prove that the Accused had knowledge of the order by other means. In the test case which is to be conducted now, attempt should be made to prove that the Accused had knowledge of the order by other means. "Failure to observe the provisions of Rule 119 of the Defence of India Rules, would not necessarily be fatal to a prosecution of a person disobeying such order. It would still be open to the Crown to prove that the acused had information of the order. Nor is the validity of the order in any way affected by any defect in its publication. The onus is of course on the prosecution to prove that the accused has knowledge of the Order". (A.I.R. 1947 Cal. 418). In this case prosecution can prove publication of the order in the Gazette and Gujrat Samachar. The publication of the press note in various newspapers should be proved and the prosecution should demonstrate that these are the newspapers which the persons concerned arelikely to read.

The question for consideration is whether the remaining prosecutions for breach of the Oilseeds (forward contracts Prohibition) Order, 1943 may be withdrawn in view of the judgment of the Additional Sessions Judge, Ahmedabad in criminal appeal. No. 159 of 1948 which was a test case.

The Additional Sessions Judge acquitted the Accused on the ground that the Oilseeds (Forward - contracts Prohibition) Order, 1943 was not properly published as required by Rule 119. In his ju gment he has observed as follows:--

" It is not laid down in Rule 119 that defective publication invalidates a conviction but since there would other wise be no point at all in including Rule 119 in the Rules on must presume that that was the intention of the Central Government."

This observation does not appear to be correct. It is clearly stated in sub-xxxxx clause (ii) of sub rule (1B) of Rule 1xxx 119 that failure to comply with the provisions of subrule (1) shall not preclude proof by other means th t the Accused was informed of the order and shall not affect the validity of the order. Sub-rule (1B) was added to Rule 119 on 21-7-1945 and though the Oilseeds (Forward contracts Prohibition) Order, 1943 was issued before 21.7.1945, the sub-rule being procedural would apply to judicial proceedings continued or instituted after that sub rule came into force. It appea that no evidence was laid in that case to prove that the Accused had knowledge of the order by other means. Instead of therefore filing an appeal against the order of acquittal passed by the Additional Sessions Judge , Ahmedabad, in the test case, a strong case from the remaining 42 cases may be chosen as a test case and it should be conducted on the lines of the memo of - instructions amended here to and if it fails then

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the question whether the other cases should be withdrawn or whether the mattershould be taken to the High Court may be considered

Sd/- I.M.Lad
9/2

o.c.

Remembrancer of Legal Affairs.

U.O.R. to F.D. No 1662 dated 11th Feb 1949

Mjr/12/6

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Office of the R.L.A.

Defence of India Rules
Rule 75 A

Bombay Rents Hotel and Lodging House Rates Control Act 1947
Sec. 23(2)

R.L.A's opinions

No. 5697/ dt 16-8-46.

No. 839 dt. 23-1-48

The facts disclose that the flat on the 3rd floor of the "Ratnagiri House " was requisitioned by the Collector of Bombay under rule 75A of the Defence of India Rules. It has been repeatedly held by R.L.A. that an order requisitiong the premises under rule 75 of the Defence of India Rules does not create the relationship of landlord and tenant between the owner and Government and the re-nt paid is construed as compensation on behalf of Government (cf. R.L.A's No 5697 dt16-8-46). Consequently , when no relationship of landlord and tenant between the owners and the Government existed in the present case, resort could not be had to the provisions of section 23(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The view expressed by M/s. Little & Co. is not correct, and the appears no ground for modifying R.L.A's opinion No. 839, dt 23-1-48.

When under the terms of G.R., P.W.D., No. 447/36 dt. 1-5-48. Govt. has agreed to bear the cost for renovating the electric installation, it is a matterof policy for the P.W.D. to decide whether the amount should now be revocered from Rao Bhadur D.A. Gadkary.

Sd/- P.M.Lad
O.C. 21/6
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 6877, dated 22nd June 1949

Mjr/12/6

Office of the R.L.A.

Fixation fo Compensation for requisitioned premises.

Defence of India Rules. Rule 75(1).

The landlord would be entitled to compensation equal to reasonable rent. Whether, what has been offered by the Collector would be reasonable rent would be a question of fact on which Remembrancer of Legal Affairs can express no opinion. Since the landlord is not prepared to accept the rent offered by the Collector, the only course open would be to appoint an arbitrator to fix the compensation. The delay on the part of the landlord would not defeat his claim for reasonable compensation.

Sd/- P.N.Lad
29/6

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Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 7241, dated
31st June 1949.

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Office of the H.L.A.

Defence of India Act, 1939 Sec. 19

It is not necessary to consult the Central Government when the power of the Central Government under Sec. 19 of the Defence of India Act have been delegated to the Provincial Government. (See Government of India Notification Defence Department No 1365-OR/42 dated 19-9-42).

Sd/- P.M.Lad

o.c. 26/9/

Remembrancer of Legal Affairs.

Mjr/12/6 4.R.T. F.D. 1084 dt. 27 Sept. 1949

4 Cs.

Office of the R.L.A.

Defence of India Act, 1939. Section 19. Barber's shop Property at Ahmedabad. Arbitration in respect of .

It appears from the statement of facts contained in File II at pages 7-8 that the compensation payable in respect of the requisitioned property was not fixed at Rs. 40,000 by Govt. as a result of a compromise in a civil suit. The requisition proceedings under Rule 75A of the Defence of India Rules were taken independently of the pending civil litigation and there was in fact no compromise between all the parties interested in the property and Govt. It appears that the property bearing census No. 3255 known as the barber's shop belonged to Mr. Framroz and other shares and it is immaterial whether this property forms part of the property known as Karanj property for the purpose of determining the claim of Mr. Framroz and other co-shares for compensation. The other sharers in the Karanj property do not dispute the claim of Mr. Framroz and its co-shares. It appears that Mr. Framroz and his co-shares claim not only the right to compensation in respect of the building but also to compensation in respect of the land over which the barber's shop stands. The amount of compensation payable in respect of this Barber's shop is assessed at Rs. 500 which is not acceptable to Mr. Framroz and his co-shares. Consequently Govt. will have to refer the question of fixing the compensation to an arbitrator under section 19 of Defence of India Act, 1939.

Sd/- P.M.Lad
12/10
Remembrancer of Legal Affair

o.c.

U.R. to H.D. No 11420 dated 13th October 1949.

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Under Under clause (b) of sub-section (1) of section 19 of the Defence of India Act, the Provincial Government can appoint as an arbitrator a person qualified under sub-section (3) of section 220 of the Government of India Act, 1935. for appointment as a Judge of a High Court. Under clause (c) of the said sub-section (3) a person who has for at least five years held a judicial office in India not inferior to that of a subordinate judge, or judge of a Small Cause Court is qualified for appointment as a judge Judge of a High Court. It appears that by G.R., R.D. No. 7926/39-Confl, dated 21st July 1943 Government has issued instructions that only civil judges of five years standing should be appointed as arbitrators. There is no other procedure prescribed. The Civil Supplies Department may consult the Home Department who will suggest the name of the arbitrator.

Sd/- P.M.Lad

O.C. 12/11.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No 12924 , dated the 15th November 1949

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